City of Austin FSD Purchasing Office
Certificate of Exemption

DATE: 05/18/2017

DEPT: FSD - Controller's Office

TO: Purchasing Officer or Designee

FROM: Richard Scheel

BUYER: Jim Howard

PHONE: (512) 974-2531

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of $50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

○ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality

○ a procurement necessary to preserve or protect the public health or safety of municipality's residents

○ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property

○ a procurement for personal, professional, or planning services

○ a procurement for work that is performed and paid for by the day as the work progresses

○ a purchase of land or right-of- way

◉ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

○ a purchase of rare books, papers, and other library materials for a public library

○ paving, drainage, street widening and other public improvements, or related matters, if at least one- third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements

○ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

○ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212

○ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391

○ services performed by blind or severely disabled persons

○ goods purchased by a municipality for subsequent retail sale by the municipality

○ electricity

○ advertising, other than legal notices

○ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.

- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.

- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.

- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.

- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.

- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The Advantage Financial System is an Intellectual property of CGI, Inc. In addition, CGI's marketplace relationships with third party vendors providing supporting software tools are the result of agreements between CGI and those third parties and are not otherwise available to the City on similar terms.

4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The product is a component of an existing system that is only available from one supplier. The replacement of a component or a repair part may only be available from the original supplier.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Fiserv
which will cost approximately $ 500,000.00 _____ (Provide estimate and/or breakdown of cost).

Recommended Certification	Originator	Date

Approved Certification	Department Director or designee	Date

	Assistant City Manager / General Manager or designee (if applicable)	Date	5-30-17

Purchasing Review (if applicable)	Buyer	Date	Manager Initials	6.12.17

Exemption Authorized (if applicable)	Purchasing Officer or designee	Date	6.12.17

02/26/2013

fiserv.

July 6, 2017

Jim Howard
City of Austin
1124 S. IH 35, Suite 300
Austin, TX 78704

Dear Mr. Howard:

Please accept this letter as notification the Fiserv DXR suite of software is proprietary to Fiserv and Fiserv is the only authorized dealer for the software.

Should you have any questions please contact your account manager, Chris Gentry, at (512) 314-7064 and he will be happy to assist you.

Thank you for your valued partnership and continued patronage.

Sincerely,

Tom Harrelson
Vice President, Account Services
Fiserv EDD

CONTRACT

MA-5600-18013100011

BETWEEN THE CITY OF AUSTIN and

Fiserv Solutions, Inc.

For

Maintenance, Support and Programming of Financial Report Storage and Retrieval Software

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Fiserv Solutions, LLC. ("Contractor"), having offices at 901 South Mopac Expressway, Bldg III Ste. #500, Austin, TX 78748.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor itself and through its Affiliates (as defined herein), is engaged to provide the services set forth In Section 2, Scope of Work, in support of that certain software of the Contractor which shall be licensed to the City (the "Software") subject to and in accordance with the terms of Appendix A (the "License Agreement"). For the avoidance of doubt, the Software and the City's use thereof shall be solely governed by the terms of the License Agreement and no contrary or additional terms or conditions hereof shall have any force or effect with respect thereto. "**Affiliate**" means an entity that controls, is controlled by, or is under common control with a party, where "control" means the direct or indirect ownership of more than 50% of the voting securities of such entity or party.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities assigned to the Contractor and identified in the Scope of Work (Exhibit B) and the Support and Maintenance Services (Exhibit C). In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests In resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be, Tom Harrelson, Director, Account Services, tom.harrelson@Fiserv.com, Phone: (512) 329-0081 ext. 3332. The City's Contract Manager for the engagement shall be Brian Bailey, IT Project Manager Senior. Brian.Bailey@austintexas.gov, (512) 974-2109. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager of the replacement.

SECTION 2. SCOPE OF WORK

2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all services described herein in accordance, in all material respects, with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations, in each case, as applicable to the Contractor in the performance of its obligations under this Contract.

2.2 <u>Tasks</u>. In order to accomplish the work described here, the Contractor shall perform each of the following tasks:

2.2.1 See Scope of Work (Exhibit B) and Support and Maintenance Services (Exhibit C).

SECTION 3. COMPENSATION:

3.1 <u>Contract Amount.</u> The Contractor will be paid at those rates as indicated in Exhibit A. On-going maintenance services will be fully paid in advance annually. All other fees for services will be invoiced in the month following the month in which the services are performed. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed $ 383,595 for the five (5) year period for all fees and expenses.

3.2 <u>Fee Changes</u>
   I.   Requests for a change to any Fees herein shall be made in writing and submitted to the appropriate Contract Manager as defined In Clause 1.4, Designation of Key Personnel within 90 days of the annual renewal date. The letter must be signed by a person with the authority to bind the party contractually, shall reference the contract number, and include the required documentation. The only people so authorized by the City are members of the Corporate Purchasing Department located at 124 W. 8th Street, St 310, Austin, TX 78701. The ability of a City employee to bind the City can be confirmed by calling 512-974-2500

   II. Once the change request is received, the other party will have 30 calendar days to review and approve/disapprove the requested change. Any approved change will be implemented on the start date of the new renewal period. Should the non-requesting party not agree with the requested change, the non-requesting party may either agree to keep the pricing currently in effect, negotiate an acceptable change or terminate the contract.

   III. Any change to the Periodic Fixed Fee shall be based solely on information obtained from the following:

   The Consumer Price Index for Urban Wage Earners and Clerical Workers
   Series ID: CWUR000SAE21, Not Seasonally Adjusted
   Area: U.S. city average
   Item: Information and information processing
   Base Period: December 2016=100
   Periodicity: Monthly

   IV. To access the above information, go to Bureau of Labor Statistics Data @ http://data.bls.gov/. Click on Databases and Tools and go to Urban Wage Earners and Clerical Workers "Multi-Screen". Using the descriptive information above follow the prompts until you get to the listed Series I.D.

   V.   The Parties agree that regardless of any changes to the CPI, referenced in III, above, the Annual Support Rate will not fall below $ 11,250/year and no annual increase will exceed 5%/year.

3.3 <u>Invoices</u>

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Controller's Office
Attn:	Administration
Address	PO Box 2920
City, State, Zip Code	Austin, TX 78768

3.3.2 Time billed for labor shall be limited to hours actually worked in connection with the services to be supplied by the Contractor hereunder.

3.3.3 Intentionally Deleted

3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment

3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.4.2 If payment is not timely made, (per this paragraph), Interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

The City may withhold any disputed part of any payment otherwise due the Contractor to such extent that, prior to the due date thereof, the City has provided the Contractor with written notice describing the disputed amounts in reasonable detail. Such notice may be delivered by email to the Contractor's point of contact.

3.4.3 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4.4 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.5 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. Nothing herein shall relieve the City of its obligations to pay for those services performed by the Contractor prior to the Contractor's receipt of any notice.

3.6 **Travel Expenses:** There are no travel expenses to be paid on this contract.

3.7 **Final Payment and Close-Out**

3.7.1 Subject to the limitations set forth in Section 7.29, the making and acceptance of final payment will constitute a waiver of all claims by the City against the Contractor, except, for up to two years after such claim accrued, claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on November 1, 2017 ("Effective Date"). The Contract shall be in effect for a five (5) year period, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 This is a 60 months Contract. Fees are detailed in Exhibit A.

4.2 **Right to Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default:** A party hereto shall be in default under the Contract if such party (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in any report or deliverable required to be submitted to the other party pursuant to the terms of this Contract.

4.4 **Termination for Cause:** In the event of a default, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless a later date is otherwise specified, after the date of receipt of such notice by the breaching party, unless the breaching party, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the non-breaching party's reasonable satisfaction that such default does not, in fact, exist. If any default remains uncured, then, in lieu of termination, the City may place Contractor on probation for a specified period of time within which the Contractor must correct any outstanding defaults. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a

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longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to correct all defaults during the probation period, the City may proceed with suspension. In the event of any uncured default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall, subject to limitations set forth in Section 7.29 hereof and, as applicable, Section 11 of the License Agreement, be entitled to seek recovery all actual damages, costs, losses and expenses, incurred by the City as a direct result of the Contractor's default. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon ninety (90) calendar day's prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof and clause 3.4 above.

4.6 **Fraud**: Fraudulent statements by the Contractor in any report or deliverable required to be submitted by the Contractor to the City under this Contract shall be grounds for the termination or the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance**: The requirement for insurance is waived for this contract.

5.2 **Equal Opportunity**:

5.2.1 Fiserv agrees that it shall abide by the requirements of Presidential Executive Order 11246, appearing at 41 CFR §§60-1.4(a), 60-300.5(a), 60-741.5(a), and as amended by the Executive Order dated July 21, 2014. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

5.3 **Acceptance of incomplete or Non-Conforming Deliverables**: If, instead of requiring correction or removal and replacement of defective or non-conforming deliverables, in accordance with the acceptance procedures, if any, set forth in the Exhibits hereto, the City prefers to accept it, the City may do so. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are agreed upon by the parties in writing as necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such agreed upon amount will be refunded to the City by the Contractor.

5.4 **Delays**:

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the

Dispute Resolution process specified herein. However nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of god, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonable necessary to overcome the effect of such failure to perform.

Ownership and Use of Deliverables: The Contractor shall own all rights, titles, and interests throughout the world in and to the deliverables, including any and all intellectual property rights therein, and the City hereby expressly acknowledges and agrees that, in no event and under no circumstances shall any deliverables be deemed, considered or otherwise construed as work made-for-hire by the Contractor. Deliverables shall be licensed to the City for its use subject to and in accordance with the terms of the License Agreement in any and all case(s) the City's right to the ownership of the data contained within the reports shall be retained by the City.

5.5 **Rights to Proposal and Contractual Material:** Any materials submitted by the Contractor to the City shall be subject to the Texas Public Information Act. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such; provided that in no event shall Contractor be required to mark the Software (including without limitation, any modifications, upgrades, or enhancements thereto) or any documentation or other materials provided in connection with or relating to the Software, each of which is hereby acknowledged to be proprietary and confidential information of the Contractor. Except as set forth herein, determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

SECTION 6. WARRANTIES

6.1 **Warranty – Price**

6.1.1 The Contractor certifies that the Fees/prices in Exhibit A have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.2 **Warranty-Services:** The Contractor warrants and represents that all services to be provided the City under this Contract will be performed in a good and workmanlike manner in accordance with generally accepted standards and practices in the Contractor's industry, and, in all material respects, with the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations, in each case, to the extent the same are applicable to Contractor in its performance of its obligations hereunder. Additional warranties are provided for in Sections 7.12 and 7.27 of this Contract.

THE WARRANTIES STATED IN THIS CONTRACT ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY THE CONTRACTOR WITH RESPECT TO ITS OBLIGATIONS UNDER THIS CONTRACT. THE CITY HEREBY EXPRESSLY WAIVES, ALL OTHER REPRESENTATIONS, CONDITIONS OR WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,NON-INFRINGEMENT, AND ANY ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work:** The City shall provide the contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with a subject to the applicable security laws, rules, and regulations. Contractor shall be provided written notice of any laws, rules and regulations which are unique to the site.

7.2 Workforce

7.2.1 The Contractor shall utilize for the performance or its obligations hereunder only orderly and competent workers, skilled in the performance or the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not, while engaged in participating or responding to a solicitation or while in the course and scope or delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of contract

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall promptly investigate such allegation and, if determined to be accurate, shall remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 Compliance with Health, Safety, and Environmental Regulations: While on City premises and in the performance of its obligations hereunder, the contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the city and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. Subject to the limitations in Section 7.29, the contractor shall defend the City against all third party claims, demands, suits, actions and pay all final judgments or amounts agreed in settlement by the Contractor, arising from the breach of the contractor's obligations under this paragraph.

7.4 Deleted.

7.5 Right to Audit

7.5.1 The Contractor agrees that, to the extent permitted by applicable law or regulation, and no more than once a year, Fiserv shall provide the representatives of the Office of the City Auditor or other authorized representatives of the City, supporting documentation of those records of the Contractor related solely and exclusively to the amounts invoiced under this Contract and, upon request, the Contractor shall provide the City with copies (or allow the City to reproduce) documents reasonably related to the fees charged to the City under this Contract. The Contractor shall retain all such records for a period of two (2) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.6 Stop Work Notice: The City may issue an immediate Stop Work Notice in the event the Contractor Is observed performing in a manner that is in direct violation of Federal, State, or local guidelines that are specifically applicable to the Contractor's internal business operations in the performance of its obligations hereunder. Upon notification, the Contractor will cease all work until the violation has been corrected.

7.7 Indemnity:

7.7.1 Definitions:

7.7.1.1 "Indemnified claims" shall include any and all third party claims, demands, suits or causes of action, including all reasonable costs and expenses incurred in connection with the use of litigation, mediation or other alternate dispute resolution mechanism to resolve such third party claims, and related attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the tangible personal property of any third person; and/or;

7.7.1.1.2 death, bodily injury, illness, disease, workers' compensation, loss of services, or loss of income or wages to any person.

7.7.1.2 "Fault" shall mean breach of any obligations undertaken pursuant to this Contract, willful misconduct, or breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL, AT ITS EXPENSE, DEFEND THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS AGAINST ALL INDEMIFIED CLAIMS DIRECTLY ARISING OUT OF OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT AND SHALL PAY THOSE AMOUNTS FINALLY AWARDED TO SUCH THIRD PARTY BY A COURT OF COMPETENT JURISDICTION OR AGREED IN SETTLEMENT BY THE CONTRACTOR, THE CITY SHALL PROVIDE THE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INDEMNIFIED CLAIM AND THE CONTRACTOR SHALL HAVE THE SOLE RIGHT TO CONTROL THE DEFENSE OR OTHER DISPOSITION OF SUCH CLAIM, NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

THE CITY MAY, AT ITS EXPENSE, ENGAGE COUNSEL OF ITS CHOOSING TO PARTICIPATE IN SUCH DEFENSE TO PROTECT ITS INTERESTS.

7.8 Claims: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which would, if decided against the Contractor, have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City promptly after receipt of notice by the Contractor. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street 4th Floor, Austin Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 Notices: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	Fiserv Solutions, Inc.
Attn: Contract Administration	Attn: Tom Harrelson
P O Box 1088	901 South Mopac Expressway
Austin, TX 78767	Austin, TX 78746

7.10 Confidentiality: In connection with the performance of connection with the performance of each party's obligations under this Contract, a party ("Recipient") may require access to certain of the other

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party's ("Discloser") and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Discloser or its licensors consider confidential) (collectively, "Confidential Information"). Recipient acknowledges and agrees that the confidential information is the valuable property of the Discloser and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the Discloser and/or its licensors. The Recipient (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information of Discloser in strict confidence and, except as required for the performance of its obligations under this Contract, shall not disclose, disseminate, copy, divulge, recreate, or otherwise use such Confidential Information without the prior written consent of the Discloser or use the Confidential Information in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Recipient promptly notifies Discloser before disclosing such information so as to permit Discloser reasonable time to seek an appropriate protective order. Recipient agrees to use protective measures no less stringent than Recipient uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentially of the Confidential Information.

7.11 Advertising: The Contractor shall not advertise or publish, without the City's prior consent, which consent shall not be unreasonably withheld or delayed, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 No Contingent Fees: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty which results in the City incurring an obligation to pay any commission, percentage, brokerage or contingent fee, the City shall have the right to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 Gratuities: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract.

7.14 Prohibition Against Personal Interest in Contracts: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation: The contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by either party without the prior written consent of the other party. Any attempted assignment or delegation shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or, entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 Waiver: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 Modifications: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any invoice, order or other document issued by either the City or the Contractor shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 Interpretation: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

7.20 Dispute Resolution

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agrees to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiations fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.20.3 In the event of any legal proceedings, the prevailing party in any arbitration, suit, or action brought by one party against the other party to enforce the terms of this contract or any rights or obligations hereunder, shall be entitled to receive its reasonable costs, expenses, and attorneys' fees of bringing such arbitration, suit, or action.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program:

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C, and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City Contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract.

7.24 Jurisdiction and Venue: The Contract is made under and shall be governed by the laws of the State of Texas, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be governed by the substantive laws of the State of Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of a party to seek and secure injunctive relief from any competent authority as contemplated herein.

7.25 Invalidity: The invalidity, illegally, or unenforceability of any provision of the Contract shall in no way effect the validity or enforceability of any other portion or provision of the contract. Any void provision shall be deemed severed from the contract and the balance of the Contract shall be construed and forced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provisions with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.26 Holidays: The following holidays are observed by the City:

1.1.1 Holiday	1.1.2 Date Observed
1.2 New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
1.3 President's Day	Third Monday in February
1.4 Memorial Day	Last Monday in May
Independence Day	July 4
1.5 Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.27 Survivability of Obligations: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the contract.

7.28 Non-Suspension or Debarment Certification: The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.29 Limitation of Liability:

(I) EXCEPT (a) IN THE EVENT OF THE CITY'S MISUSE OR MISAPPROPRIATION OF THE CONTRACTOR'S PROPRIETARY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF GOODWILL, OR FOR SPECIAL INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR TORT DAMAGES ARISING OUT OF OR RELATING TO THIS CONTRACT, REGARDLESS OF WHETHER SUCH CLAIM ARISES IN TORT, CONTRACT, OR OTHERWISE.

(II) EXCEPT AS SET FORTH IN SUBSECTIONS (III) AND (IV) BELOW, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER OR ANY THIRD PARTY FOR ANY AND ALL CLAIMS OR OBLIGATIONS RELATING TO THIS CONTRACT SHALL BE LIMITED TO AN AMOUNT

EQUAL TO THE FEES PAID BY THE CITY IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO A CAUSE OF ACTION OCCURRED.

(III) THE CONTRACTOR'S AGGREGATE LIABILITY TO THE CITY AND ANY THIRD PARTY WITH RESPECT TO ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.7 OF THIS CONTRACT SHALL IN NO EVENT EXCEED $100,000.

(IV) THE LIMITATIONS SET FORTH IN SUBSECTION (III) ABOVE SHALL NOT APPLY WITH RESPECT TO THE CITY'S MISUSE OR MISAPPROPRIATION OF THE CONTRACTOR'S PROPRIETARY RIGHTS.

(V) NOTHING IN THIS SECTION 7.29 SHALL BE DEEMED OR OTHERWISE CONSTRUED TO LIMIT THE CITY'S OBLIGATION TO PAY ANY FEES DUE OR OWING PURSUANT TO THIS CONTRACT.

7.30 Non-Solicitation: The City shall not, without the Contractor's prior written consent, directly or indirectly, solicit for employment or hire any Restricted Employee (as defined herein) within the 12-month period starting on the earlier of: (I) termination of such Restricted Employee's employment with the Contractor, or (II) termination or expiration of this Contract. "Restricted Employee" means any former or current employee of Contractor or its affiliates that the City became aware of or came into contact with during the Contractor's provision of services under this Contract.

7.31 Incorporation of Documents: Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the internet at the following online address: http://www.ci.austin.tx.us/purchases/standard.htm.

7.32 Order of Precedence: The Contract includes the exhibits and attachments hereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

7.32.1 this contract;

7.32.2 the Exhibits hereto

7.32.3 the Attachments hereto.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Fiserv Solutions, Inc.

By: _Wade Fairey_
Signature

Name: _Wade Fairey_
Printed Name

Title: _Senior Vice President_

Date: _2/28/2018_

CITY OF AUSTIN

By: _____
Signature

Name: _JAMES T. HOWARD_
Printed Name

Title: _PROCUREMENT MANAGER - IT_

Date: _3/5/18_

Lists of Exhibits / Attachments

Exhibit A	Software and Fees
Exhibit B	Statement of Work
Attachment II	Contractor Requirements
Attachment I	City's Acceptable Use Policy
Exhibit C	Support and Maintenance Service Agreement
Exhibit D	INTENTIONALLY BLANK
Exhibit E	Non Discrimination Certification (UC Note for reference only 5.2.1)
Exhibit F	Non-Suspension or Debarment Certification
Appendix A	License Agreement

Appendix A

License Agreement

This License Agreement ('Agreement") is entered into as of November 1, 2017 (Effective Date") by and between Fiserv Solutions, Inc., a Wisconsin Corporation with offices located at 901 South Mopac Expressway, Bldg. III, Ste. #500, Austin, TX 78746 ("Fiserv") and City of Austin, a home rule municipality Incorporated by the State of Texas, with offices located at 124 W. 8th Street, Ste. 310, Austin, TX 78767 ("City").

Witnesseth:

WHEREAS, Fiserv is the licensor of Software (as defined below):

WHEREAS, City wishes to install and Use (as defined below) Software in City's premises; and

WHEREAS, Fiserv and City have or will concurrently enter into that certain Contract between the City of Austin and Fiserv solutions, Inc. for Maintenance, Support, and Programming of Financial Report Storage and Retrieval software (the "Services Agreement"), pursuant to which Fiserv shall provide certain services to City related to or in respect of the Software.

NOW, THEREFORE, the parties agree as follows:

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1. Definitions

The following definitions are used in this Agreement:

1.1 **"Computer System"** means the manufacturer-supplied equipment and software. City shall have sole responsibility to own or lease, unpack, plan, Install, test, and maintain the equipment according to any and all applicable building or electrical codes, regulations or requirements, as well as the manufacturer and Fiserv recommendations provided in writing to the City.

1.2 **"Documentation"** means the technical end-user technical end-user documentation for the Software, as delivered by Fiserv to City with the Software, as may be updated by Fiserv from time to time.

1.3 **"Enhancements"** means modifications made to Software that add program features or functions not originally within the Software and that are provided upon payment of additional License Fees. Fiserv reserves the right to determine which changes are included in Upgrades or separately priced Enhancements.

1.44 "Functional Specifications" means the software specifications based on the business requirements developed as part of the implementation plan.

1.5 **"Location"** means only the premises identified on Exhibit A to the Service Agreement as_____.

1.6 **"Maintenance Fee"** means the annual fee specified in each Exhibit A to the Service Agreement.

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1.7 **"Non-conformity"** means a failure of Software to perform in substantial accordance functions described in the Documentation.

1.8 **"Operational Support"** means optional Fiserv services available at City request, to support City's Software operation. Operational Support shall only be available if City is receiving Maintenance Services.

1.9 **"Premium Maintenance Service"** means any maintenance services as specifically identified on Exhibit A to the Service Agreement as Premium Maintenance Services.

1.10 **"Professional Service Fees"** means fees specified in Exhibit A to the Service Agreement for professional services provided by Fiserv related to the Software.

1.11 **"Software"** means the standard, unmodified computer programs in object code, together with one set of Documentation as specified in Exhibit A to the Services Agreement. Software does not include separate independent, and stand-alone modules or subsystems that City has developed and maintained without Fiserv's assistance.

1.12 **"Software System"** means the software and Third Party Software.

1.13 **"Specification Non-conformity"** means a failure of the modified Software to operate in accordance with the Functional Specifications.

1.14 **"Standard Maintenance Services"** means maintenance services described in Exhibit C to the Services Agreement, specifically excluding Premium Maintenance Services. Standard Maintenance Services are available only with respect to the current and last prior software release.

1.15 **"Support and Maintenance Services"** means Standard Maintenance Services and, if applicable Premium Maintenance Services and Operational Support.

1.16 **"Taxes"** means all sales, use, excise, value added, and other taxes and duties however designated levied by any taxing authority. Taxes shall not include any levies by any taxing authority based on Fiserv's net income.

1.17 **"Third Party"** means any party other than Fiserv, and its employees, agents, and subcontractors, and City.

1.18 **"Third Party Software"** means software provided by Fiserv that is owned or licensed by Third Parties.

1.19 **"Total License Fee"** means the total sum specified in Exhibit A to the Services Agreement. Any fees for modifications, Enhancements, or additions to software are included in Exhibit A. to the Service Agreement.

2.0 **"Upgrades"** means changes made to maintain compatibility with new system software releases or to improve previously existing features and operations within Software. This primarily includes Software program fixes.

2.1 **"Use"** means copying or loading any portion of software from storage units or media into any equipment for the processing of data by software, or the operation of any procedure or machine instruction utilizing any portion of either the computer program or instructional material supplied with software. Use is limited to type of operations described in the Documentation solely to process City's own work. Use specifically excludes any service bureau or time-share services to

Third Parties without Fiserv's prior written consent and payment by City of additional fees in accordance with mutually agreed terms.

2. License

2.1 In exchange for City's payment of the license fees set forth in Exhibit A, Fiserv agrees to furnish Software to City and does hereby grant to City a personal, non-exclusive, nontransferable License to Use the Software for the term of the Contract at the Location on the designated Computer System (I) to process the designated number of pages; or (II) by the maximum number of users; as specified in Exhibit A to the Service Agreement. Any rights not expressly granted in this License Agreement of Appendix A are expressly reserved.

2.2 City may change the Location in the event City transfers its data processing department to a new location within the same country. City will provide Fiserv with 15 days advance notice of any proposed transfer of operations. Assistance by Fiserv related to the transfer shall be chargeable at Fiserv's then current professional service rates. City shall reimburse Fiserv for any out-of-pocket expenses.

2.3 Fiserv prohibits the copying of any portions of the Software System except that City may copy reasonable quantities of any standard end user documentation; and may copy machine language code, in whole or in part in reasonable quantities, in printed or electronic form, for use by City at the Location for back-up, or emergency restart purposes, or to replace copy made on defective media. The original, and any copies of Software, or any part thereof, shall remain Fiserv's property.

2.4 City shall maintain any such copies and the original at the Location. City may transport or transmit a copy of Software from the Location to another location in the same country as the Location for back-up use when required by Computer System malfunction, provided that (i) City must promptly inform Fiserv of the emergency or disaster (but in no event later than 5 days following the commencement of such use), (ii) City must stop using such copy promptly after the Computer System and facility affected by the emergency or disaster is restored, and (iii) the copy or original is destroyed or returned to the Location when the malfunction is corrected. City shall reproduce and include Fiserv's copyright and other proprietary notices on all copies, in whole or in part, in any form, of the software system made as specified herein.

2.5 City shall not decompile, disassemble, or otherwise reverse engineer the Software System.

2.6 Third Party software is provided to City under the following supplemental terms:

(i) Use of Third Party software shall be restricted to use as part of the Software System.
(ii) Third Party Software is provided "as is", Fiserv and Third Party Software owners shall not be liable for any damages, whether direct, indirect, incidental, or consequential arising from the use of the Third Party Software.
(iii) Publication of benchmark tests of Third Party Software is permitted only by a writing signed by an authorized officer of Fiserv and the Third Party Software owner.
(iv) Third Party software owners are hereby designated as third party beneficiaries of this License Agreement as it relates to their software.
(v) Third Party software is not specifically developed, or licensed for use in any nuclear, aviation, mass transit, or medical application or in any inherently dangerous applications. Third Party software owners and Fiserv shall not be liable for any claims or damages arising from use if City uses the software System for such applications.

2.7 Fiserv grants City the right to use any software modifications furnished or authorized by Fiserv pursuant to this Agreement.

2.8 City shall obtain and maintain at its own expense such data processing and communications equipment and supplies as may be necessary or appropriate to facilitate the proper use of the Software System.

3. License Fees

City agrees to pay the license fees in accordance with the schedule set forth in Exhibit A to the Service Agreement.

4. **Professional Service Terms**

    4.1 Fiserv agrees to provide City with access to Fiserv's professional personnel at the rates identified in Other Fees in Exhibit A to the Services Agreement and in accordance with the terms and conditions set forth herein. All such modifications and other professional service deliverables shall be performed In accordance with the procedures set forth below.

    4.2 Operational Support. If requested by City, and subject to a mutually agreed upon implementation, Fiserv agrees to provide Operational Support at the rates specified in Exhibit A to the Service Agreement.

    4.3 Business Requirements List. City shall provide Fiserv with all necessary information concerning changes or new City requirements. Fiserv shall review and suggest revisions to such Business Requirements List on a timely basis. The parties shall mutually agree in writing the final Business Requirements List for any project.

    4.4 Functional Specifications. Any modifications to the Software or other professional service deliverables shall be based on specifications created by Fiserv and approved by City as provided below.

        (I) Fiserv shall develop Functional Specifications based on the Business Requirements List for City's written approval. Fiserv shall not be obligated to perform any further development work until the Functional Specifications are approved in writing by City, which approval shall not be unreasonably withheld or unduly delayed.

        (II) Modifications, changes, enhancements, conversions, upgrades, or additions to the agreed upon work shall be added only upon mutual written agreement. In the event the parties agree to add any such items, the Functional Specifications and applicable Project Plan shall automatically be modified to the extent necessary to allow for the implementation or provision of the terms.

    4.5 Project Plan. Fiserv shall develop a Project Plan for each modification to the software or other professional service deliverables based on the Functional Specifications. Each Project Plan shall contain a listing of the nature and timing of tasks for the project, some of which are to be performed by Fiserv and some by City. Modifications and changes to the project Plan shall be only by mutual agreement of the parties.

    4.6 Acceptance. The Software modifications shall be deemed accepted by City by the live operation and use of the modified software in City's business for a period of 10 days unless City promptly notifies Fiserv in writing (and with reasonable particularly) upon conclusion of the acceptance test or earlier upon discovery of any specification Nonconformities disclosed by such testing or use. Fiserv shall correct any such Specification Nonconformities disclosed by such testing or use. Fiserv shall correct any such Specification Nonconformities without further charge to City within a reasonable time of such notice.

    4.7 Should Fiserv provide installation, conversion, or training to City, the Fee therefore shall be specified in Exhibit A to the Services Agreement. If City is unable to provide access to required facilities or personnel or is unable to meet its tasks assigned on the Business Requirements List or the Project Plan, Fiserv will endeavor to reschedule tasks to minimize the non-productive time arising. All such non-productive time is chargeable to City. If such non-productive time is expected to be significant, Fiserv will endeavor to reassign its personnel to other suitable work. In this event, City will not be charged for the time personnel were reassigned.

5. Support and Maintenance Services Terms

5.1 Subject to the limitations in this Section 5, Fiserv will provide the Support and Maintenance Services to City in accordance with the terms of the Service Agreement and the applicable exhibits thereto.

   (I) Up to 30 hours per year for telephone support during normal business hours for reasonable operator support. For telephone support over 30 hours or not during normal business hours, City will be charged Fiserv's then standard professional service rates.

   (II) On-site support, when requested by City, will be provided at the rates specified in Exhibit A to the Services Agreement.

   (III) Software program fixes to correct Software Non-conformities for the current release will be provided within a reasonable period of time upon notice by City. City agrees to provide Fiserv with reasonable assistance and Information In connection therewith.

   (IV) Software Upgrades will be provided to City.

   (V) Training for upgrades may offered to City at the rates specified in Exhibit A to the Services Agreement. If such training is conducted at the Location or other City site, City agrees to reimburse Fiserv for its reasonable travel and out-of-pocket expenses.

5.2 The initial Maintenance Fee and fee increase adjustment terms are specified in Section 2 of Exhibit A to the Services Agreement.

5.3. Vendor agrees to train City staff in a train the trainer approach on the technical and user operations as requested by the City and Vendor will bill the City at the rates listed in Exhibit A.2.G. Vendor agrees to initiate the training within 120 days of request for training from the City.

5.4 Fiserv may utilize remote diagnostic software and dial-up telephone lines in providing these services. City shall cooperate and assist Fiserv to expedite resolution of all Non-conformities.

5.5 Should Fiserv's review of the Non-conformity indicate, in Fiserv's reasonable opinion, that the reported problem is not a Software defect but is due to other problems including but not limited to input not in accordance with specifications, City's abuse or misuse of the Software System, or by a modification or addition to the Software System not performed by or approved by Fiserv in writing or by City's failure to properly maintain the Computer System or to install the required system software Upgrade as instructed by Fiserv, then:

   (I) City agrees to reimburse Fiserv for reasonable costs of work performed by Fiserv in investigating the problem at Fiserv's then standard service rates for the job classifications utilized in the investigations or correction, and

   (II) Fiserv, at City's request, shall advise City whether Fiserv can correct or assist in resolving such problem, and the terms under which Fiserv shall undertake the same. Upon written acceptance by City, Fiserv shall correct or assist in resolving the problem in accordance with such terms at the applicable rate set forth in Exhibit A to the Services Agreement.

5.6 Network-related problems are not covered under Standard Maintenance Service. In the event Fiserv does provide such service, City agrees to pay Fiserv's then standard professional service rates as listed in Exhibit A to the Services Agreement.

6. Term

6.1 The term of this Agreement and the licenses granted hereunder shall begin on the Effective Date and continue for five years unless terminated earlier as provided herein.

6.2 The provision of Support and Maintenance Services by Fiserv shall begin on the date set forth in the Services Agreement at the rates specified in Exhibit A to the Services Agreement.

7. Payment

7.1 Payments due hereunder shall be made by City in accordance with the terms of Section 3 of the Services Agreement.

8. **Performance**

8.1 City shall give Fiserv full access to Location, Software, and Computer System to enable Fiserv to provide Services and shall make available information, facilities, personnel, and services reasonably required by Fiserv for the performance of its obligations hereunder.

8.2 The Software shall be deemed accepted when it passes either Fiserv or Vendor's standard post-installation test procedures at the installation site.

8.3 Work in determining the nature of any problem or in making Software corrections, amendments, or additions may be carried out at Fiserv's site or the location, at Fiserv's discretion.

8.4 City agrees to maintain the Computer System, Software, and the Third Party Software in accordance with Fiserv's specified minimum configuration as indicated in the original license at the time of software installation.

9 **Warranties**

9.1 The parties acknowledge and agree that the Software is currently in use by City and that all applicable warranties and related warranty periods with respect to the Software have expired. The Software is currently under maintenance pursuant to the Services Agreement and, only those warranties expressly set forth in the Services Agreement shall apply with respect hereto.

10. **Infringement Claims**

10.1 Fiserv shall, at its expense, defend City against any Third Party claim or action that alleges use of the Software infringes a patent, copyright, or other proprietary right of such Third Party enforceable in the Location, and shall pay all amounts payable by City under any judgment, verdict or court order entered by a court of competent Jurisdiction or any settlement agreed upon by Fiserv in such Third Party claim or action, provided that City (i) notifies Fiserv promptly In writing of any such claim, (ii) grants Fiserv sole right to control the defense and disposition of such claim, and (iii) provides Fiserv with reasonable cooperation and assistance in the defense and disposition or any such claim. City may, at its expense, engage counsel of its choosing to participate in the defense In order to protect its interests. Fiserv will not, without City's prior written consent, obligate City in any way to undertake or to refrain from taking any actions which City Is not already otherwise obligated to undertake or refrain from undertaking (including, without limitation, the payment of monies in addition to those contemplated by this Agreement), as the case may be.

10.2 If, as a result of such claim, Fiserv or City is permanently enjoined from using Software by a final, non-appealable decree, or if Fiserv deems entry of such a decree to be reasonably likely, Fiserv, at its sole option and expanse may (I) procure for City the right to continue to use Software or (II) provide a replacement or modification for Software so as to settle such claim. If neither option (I) or (II) is reasonably practical in Fiserv's sole opinion, Fiserv shall discontinue and terminate the applicable Schedule upon written notice to City and shall pay to City a pro-rated refund of the Total License Fees paid by City for the infringing Software, depreciated on a five-year straight line basis commencing on the effective date of the applicable Schedule for such Software. In making this determination, Fiserv will give due consideration to all factors, including financial expense.

10.3 This Section 10 states Fiserv's entire liability and City's sole and exclusive remedy for any claims of Software infringement or misappropriation, and City hereby expressly waives any other liabilities on the part of Fiserv arising therefrom.

10.4 Fiserv shall have no liability for any claim based upon:

(i) use of any part of Software in combination with materials or software not provided by Fiserv;

(ii) modifications made by City or any Third Party;

(iii) use of other than the current release of the Software if infringement would have been avoided by Use of such current release;

(iv) use of the Software other than in according with the Documentation of this Agreement, including without limitation Software use in violation of Section 3 above; or

(v) Fiserv's adherence to City's specifications or instructions.

11. Limitation of Liability

FISERV SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF GOODWILL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, WHETHER IN TORT OR IN CONTRACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR FISERV'S OBLIGATIONS AS SET FORTH IN SECTION 10 ABOVE (FOR WHICH FISERV'S AGGREGATE LIABILITY SHALL IN NO EVENT EXCEED $200,000), FISERV'S LIABILITY TO CITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER SHALL BE LIMITED TO THE AMOUNT OF THE TOTAL LICENSE FEE CITY HAS PAID TO FISERV AS OF THE DATE ON WHICH SUCH CAUSE OF ACTION ACCRUES.

12. Title

12.1 Nothing in this Agreement shall convey to City any title to or any rights in the Software including but not limited to all proprietary rights or ownership of any modifications. City's sole right in relation to the Software or any modifications is to Use the same for the duration of this Agreement under the terms and conditions contained herein.

12.2 Software and all Software modifications, enhancements, or upgrades, and all patents, copyrights, or other proprietary rights related thereto are Fiserv's sole and exclusive property, whether made by Fiserv, City, or any of their employees or agents. City shall execute documents reasonably required by Fiserv to protect such rights.

12.3 All information, reports, studies, object or source code, flow charts, diagrams, and other tangible or intangible material or any nature whatsoever produced by or as a result of any of the services performed hereunder by Fiserv or jointly with City, shall be the sole and exclusive property of Fiserv or its corporate parent. City shall be entitled to use all such work product produced by Fiserv in accordance with the terms and conditions hereof.

13. Non-disclosure

13.1 Fiserv has granted City the limited right to use the Software as provided herein. City acknowledges that

(i) the Software, including all specifications, work product, translations and other materials developed by Fiserv; and

(ii) the terms and conditions of this Agreement contain Fiserv's highly confidential, unique, secret, and valuable information. City agrees that it shall not sell, transfer, publish, disclose, display or otherwise make available to others the Software, any materials relating to or forming a part of !he Software or any other Fiserv proprietary information without Fiserv's

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prior written consent. City agrees to secure and protect the Software and proprietary information and to take appropriate action by written agreement with its employees who are permitted access to such materials to satisfy its obligations hereunder. City further agrees to use its best efforts to assist Fiserv in identifying and preventing any use or disclosure of any portion of the Software or proprietary information. All City obligations and undertakings relating to confidentiality and nondisclosure shall survive the termination of this Agreement for any reason.

13.2 City shall permit Fiserv's authorized representatives at all reasonable times during City's normal hours of operation to audit City's Use at the Location to determine that the provisions of this Agreement are being faithfully performed. For that purpose, Fiserv shall be entitled to enter into any City premises and City hereby irrevocably grants authority to Fiserv and authorized representative to enter such premises for such purpose with 5-days written notice. Any such audit shall be conducted in such a manner as to minimize the disruption to City's business and/or Software Use.

13.3 City shall promptly notify Fiserv if City becomes aware of any breach of confidence relating to Software or other Fiserv proprietary information and give Fiserv all reasonable assistance in connection with Fiserv's investigation of same.

14 Termination

14.1 Upon termination of this Agreement or the Contract all rights in and to Software shall automatically revert irrevocably to Fiserv.

14.2 Either party may terminate the Agreement in the event of a material default not cured within a reasonable cure period (with the minimum being 30 days if no other cure period is stated) written notice to the other party specifying the nature of the default with reasonable particularity.

14.3 If Citys violates any of the Non-Disclosure, Non-Assignment, or License to Use provisions of this Agreement and fails to remedy any such breach within 15 days of notice thereof from Fiserv, Fiserv may terminate this Agreement with written notice of said action.

14.4 In the event City (i) fails to pay fees and charges due in respect of the Software or services contemplated hereunder (whether due pursuant to this Agreement or the Services Agreement); (ii) discontinues receipt of maintenance services hereunder; (iii) fails to install any Upgrade within 18 months of Fiserv's release of such Upgrade; (iv) falls to perform any of the terms or conditions other than those specifically set forth in Sub-section 14.3 and fails to remedy any such breach within 30 days of notice thereof from Fiserv; (v) becomes insolvent or ceases to do business; or (vi) terminates the Contract, Fiserv may terminate this Agreement with written notice of said action.

14.5 Exercise of either party's right of termination shall not prejudice legal rights or remedies either party may have against the other in respect of any breach of the terms of this Agreement.

15. Non-Assignment

15.1 City may not transfer or assign this Agreement or any of City's rights or obligations hereunder except upon Fiserv's prior written consent and payment of additional license fees for such transfer, if applicable, at Fiserv's then current rates. The sale of 50% or more of City's common stock, the sale of all or substantially all of City's assets, or any merger in which City is not the surviving organization, shall be deemed a transfer subject to the provisions of this paragraph.

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15.2 If the organization to which a transfer subject to paragraph (a) above is proposed derives more than 5% of its gross revenues from providing service bureau, time share, computer software consulting services, computer software licensing, or computer hardware sales, Fiserv shall be under no obligation to consent to such transfer.

16. Entire Agreement

16.1 This Agreement constitutes the complete and exclusive statement of the agreement between the parties as to the licenses granted pursuant hereto and supersedes all previous agreements with respect thereto. For the avoidance of doubt, the parties acknowledge and agree that this Agreement is intended to cover solely the licenses granted to City hereunder. All services provided in respect of such licenses shall be provided pursuant to the Services Agreement. In the event of any conflict between the terms of this Agreement and the Services Agreement with respect to the performance of such services, the Services Agreement shall control. Similarly, in the event of any conflict between the terms of this Agreement and the Services Agreement with respect to the licenses granted hereunder, this Agreement shall control. This Agreement may not be amended or modified except by a written instrument executed by both parties.

16.2 Each party hereby acknowledges that it has not entered into this Agreement in reliance upon any representation made by the other party but not embodied herein.

17. Notices

Any notice required or permitted to be given hereunder shall be given in writing by in accordance with the provisions of 7.9 of the Services Agreement.

18. Export

18.1 Subject to restrictions regarding Location, territory, or other applicable geographic limitation set forth in a Schedule, City shall not export, or re-export, directly or indirectly, any Software or any technical data derived therefrom to any country for which the United States Government or any agency thereof may require an export license *or* other government approval without first acquiring that license or approval.

18.2 City agrees that with respect to compliance with the U.S. export regulations: (i) City will comply with such export regulations regarding the Software and technical data; (ii) City will permit audits or reviews by Fiserv covering the Software and data export activity; (iii) City understands that Fiserv reserves the right to refuse performance of its obligations hereunder in cases of noncompliance by City of such export regulations; and (iv) City will not engage in any transaction or activity with any party, firm, or company that is prohibited by applicable law.

19 General Terms

19.1 The section headings used herein are inserted only as a matter of convenience and for reference shall not affect the construction or interpretation of this Agreement.

19.2 Neither party shall be responsible for delays or failures in performance resulting from acts reasonably beyond the control of that party.

19.3 This Agreement shall be construed and enforced under the laws of the State *of* Texas, without reference to its provisions relating to conflict of laws. The United Nations Convention of Contracts for the International Sale of Goods shall not apply to this Agreement.

19.4 No action, regardless of form, arising out of this Agreement shall be brought by City more than 2 years after such cause of action shall have occurred.
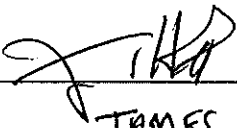
19.5 The prevailing party in an action brought against the other to enforce the terms of this Agreement or any rights or obligations hereunder, shall be entitled to receive its reasonable costs and expenses of bringing such action including its reasonable attorney's fees.

19.6 If any provision of this Agreement is held to be unenforceable, the other provisions shall nevertheless continue in full force and effect.

19.7 The failure of either of the parties to insist upon strict performance of any of the provisions of this Agreement shall not be construed as the waiver of any subsequent default of a similar nature.

IN WITNESS whereof this Agreement has been executed as of the Effective Date by the following duly authorized representatives:

For and on behalf of City   By: _____

                                   Name: __JAMES   T.   HOWARD__

                                   Title: __PROCUREMENT MANAGER IT__

For and on behalf of Fiserv   By: _____

                                   Name: __Wade Fairey__

                                   Title: __Senior Vice President__

Exhibit A
Software and Fees

1. <u>Software:</u>

Recording Software		
DX Record Tier 3 – 24 million pages annually		Complex and Simple Data
DX ARP / DX QUEMGR Automation/ Components: 2000		Automation
Retrieval Software		
DX View 100 User License		Thick Client Viewing Software

	Yes	No	Electronic
Manual	X		X
Technical Reference	X		X

City will not be allowed to resell any Fiserv Software products.
Location: City processing facility

2. <u>Fees</u>: All Fees are subject to the provisions of 3.2 Fee Changes, contained within the Contract.

   A. **License, Annual Support and Maintenance Fees** are listed below with the page allotment and phone support allocated for each year.

Contract Year	Dates	Annual Fee (1)	Annual Page Allotment	
1	2017-2018	$33,250	24,000,000	
2	2018-2019	$11,250	24,000,000	
3	2019-2020	$11,250	24,000,000	
4	2020-2021	$11,250	24,000,000	
5	2021-2022	$11,250	24,000,000	
		$78,250		

The annual fee is based on a yearly average charge of $11,250 Should any increase in price occur, reference Section 3.2 Fee Changes, of the Contract, the fee may be increased by the calculated total of the increase multiplied by the yearly average charge of $11,250 and added to the Amount of the fee associated with that Contract Year.

   B. **Annual Support and Maintenance Fees include:**

   (1) 30 hours per year of telephone support during Normal Business Hours, as defined below, for reasonable operator support. For telephone support over 30 hours during any year of this agreement, City will be billed at the applicable rate listed in D. Other Fees (below).

   (2) Requires Fiserv to train City staff on how to program these reports for DXR. Currently the City has 13 additional reports ready for configuration.

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C. Standard Support and Maintenance Available during Normal Business Hours 8:00 AM to 5:00 PM CT, M-F

D. Training:

1. Training of 2 individuals on programming new DXR report will be provided by Fiserv on or before June 30, 2018. The City will receive custom documentation on how to program new DXR reports. The City may request a repeat of this training as necessary for an additional fee.

2. End Users training "Train the Trainer".

3. Ongoing operations/ technical training

4. Other Training may be requested throughout the year as needed.

E. Intentionally Deleted

F. Intentionally Deleted

G. Other Fees

Professional Services	$225.00 per hour	Includes assistance with software upgrades new implementations or any City requested project.
Custom Application Development	$225.00 per hour	
Job Setup & Automation	$150.00 per hour	Includes index definition, forms creation, and automation scripts
Technical Support	$150.00 per hour	
Extract Pages	$.005 per page	
CD ROM Media	$15.00 per CD	
DVD ROM Media	$20.00 per DVD	

Exhibit B

Fiserv Solutions
Report Storage and Retrieval System
Statement of Work

1. Introduction

The purpose of the Financial Report Storage and Retrieval System is to make monthly financial reports available via a LAN-based system to the City's financial staff in an easily accessible query environment for viewing, research, and analysis. This system enables users to locate and retrieve specific financial images from a collection of pre-defined reports. Response time to queries should be three (3) seconds or less. The information is indexed, highly compressed, and archived.

This is a collaborative arrangement with the vendor whereby the vendor trains the City staff how to program new financial reports and assists City Staff as requested in the product/business solution.

This application will exist in a Client/Server environment. The application must display reports created under earlier versions of software. Backward compatibility is necessary without requiring the reprocessing of old reports.

2. Responsibilities

A. The City's (Controller's Office) Responsibility

- Provide access and use of facilities, including telephones, personal computer hookups, and access to copy and fax machines.

- Provide HVAC and AC power feed and generator backup for City systems

- Provide access to the City's Local Area Network/Wide Area Network (see Acceptable Use Policy – Attachment I)

- Approve milestones and deliverables   .

- Provide access to its subject matters experts

B. The Contractor's Responsibility

- Provide all system design, software installation, programming, testing, performance tuning, training, documentation and implementation required for the system as specified in Attachment II. If third-party software is required, Contractor shall assume full responsibility for its inclusion in this solution at no additional cost to City.

- Acquire and install any required software. The City intends to use existing hardware for this project. If the existing hardware needs to be replaced during the life of the contract, Fiserv agrees to assist the City in the setting up the new hardware and the installation of Fiserv software as requested by the City. The City agrees to pay for such assistance at the rates listed in Exhibit A.

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- Provide all technical documents for the proposed system and its components. These documents shall include administrator, programmer and end user manuals about product installation and maintenance, including detailed design documents for customized system application and test plans. The supplier shall grant the City the authorization to reproduce any provided documents for internal use.

- Assist in developing an acceptance test plan and assist in performance testing the entire system. During testing, the Contractor must correct any error(s) detected. Testing must successfully demonstrate that the system is fully operational before the City approves the final acceptance of the system.

- Provide technical support and problem resolution via a toll-free number during normal business hours (8:00 a.m. - 5:00 p.m. CST, Monday through Friday) during implementation.

- Respond to all problem requests received from the City once system is in production. Contractor will respond to Technical Service requests as defined in Exhibit C.

- Provide a detailed list of necessary resources and expertise, complete with personnel job descriptions, and contact information which shall be required for the City to maintain the system once implemented.

- Provide technical programming training to at least two (2) users and system administration training to at least two (2) users.

- Specify proposed demarcation of responsibilities between the City and the Contractor during system installation, testing, warranty, and maintenance.

- Assist as requested by designated City personnel to meet newly designed, on-demand and monthly production requirements.

- Insure that all solution components and product results are stored in advanced compressed environments.

3. **System Implementation Schedule**

   Note: Days are business or work days
   - The estimated time to complete installation and implementation   5 days

   - Estimated time to train and customize documentation   7 days

4. **Final Acceptance**

   Final Acceptance is defined as the Contractor successfully completing software installation, delivering technical documents and manuals, completing technical programming training for two (2) employees, completing system administration training for two (2) employees, and successfully have software produce compressed and indexed reports viewable by end users.

5. **Payment Schedule**

   Payment will be made upon completion of Final Acceptance of a duplicate of the City's current operating environment. Separate payments will be made for the following services:

- Programming of new DXR reports will be completed by Fiserv within 45 days of receiving report indexing specifications and a test file for the new DXR report. Payment for the programming and setup of new reports will be made upon the completion of the programming, setup and successful execution of the report. Fiserv will bill the City of this work at the rates listed in Exhibit A.2.G.

- Custom Application Development work will be done as requested by the City. Payment for this work will be made upon successful completion of the requested work.

- Professional Services work will be done as requested by the City. Payment for this work will be made upon successful completion of the requested work.

- Extract Pages work will be done as requested by the City. Payment for this work will be made upon successful completion of the requested work.

Exhibit C

Support and Maintenance Services

A. Software Support and Maintenance

1. **Software Support.** FISERV will correct any material coding errors found by City in the Software which are reasonably capable of correction and which adversely affect the use of the Software, provided that: City notifies Fiserv promptly in writing following the discovery of any such error; the Software has not been modified by any party other than Fiserv; the error was not caused by City, any Third Party, or hardware or operating system failure or deficiency; and the error is repeatable.

   FISERV shall make available to City on-site training, installation, consultation, and software modification or customizing services at City' cost as follows: City shall submit a written request for on-site training, installation, consultation or software modification. Within ten days or as soon thereafter as practical, FISERV shall prepare and submit a written proposal for time and cost of such services. Proposal shall be deemed valid for 30 business days. Upon written acceptance of the proposal, Fiserv will schedule the work promptly, and unless otherwise agreed upon by City, Fiserv shall prepare a statement of work for such work within 10 business days of the signed acceptance of the proposal.

   City shall provide FISERV with the cooperation, facilities, and the access necessary for the performance of FISERV's obligations. Fiserv agrees to provide reasonable cooperation in the diagnostic process to resolve problems encountered in conjunction with the use of the Software. If the problem is resolved and is found to be due to causes other than those attributable to FISERV shall have the right to bill City and City shall pay FISERV at the fees set forth in Exhibit A for its involvement in the diagnostic process.

2. **Releases of New Versions.** As part of the Software Support and Maintenance Services provided by FISERV hereunder, City will receive future releases of production versions of the Software at no additional cost which FISERV makes generally available to all licensees of the Software. New versions of the Software will be developed in accordance with FISERV product development plans, practices and procedures and may include new functionality, as well as modifications to the Software for purposes of preventative and upgrade maintenance.

3. **Release Planning.** FISERV will from time to time, advise City of probable release dates for application programming interfaces (API's) and then make API's available at no additional costs as soon as practicable after design and prior to release of related production versions of the API's.

4. **Installation Assistance.** FISERV will provide consulting services reasonably required to assist City in installing new versions of the Software in a City environment which is in accordance with the Documentation. Upon written request, FISERV will provide such installation assistance at the facilities of FISERV, City or a City site, and be paid for such services at the rates set forth in Exhibit A.

5. **Conversion Assistance.** Fiserv will provide, if necessary, standard conversion programs necessary to allow City to upgrade from each prior version to each new version of the Software. Fiserv will, as part of the installation process, assist City in running the conversion program which accompanies the new version. City will be solely responsible for testing and integrity of all data. Upon written request, FISERV will provide such conversion assistance at the facilities of City or a City site, and be paid for such on-site services at the rates set forth in Exhibit A.

B. Affiliate Technical Support

1. <u>Definitions</u>.

    (a) **"Severity One ("S1") Issues."** A City request for Technical Support services that arises from a persistent loss, interruption or failure of the Affiliate Services.

    (b) **"Severity Two ("S2") Issues."** A City request for Technical Support Services that arises because the functionality of the Services is seriously adversely affected, even though there is no persistent loss, interruption or failure of the Affiliate Services.

    (c) **"Severity Three ("S3") Issues."** A City request for Technical Support services that concerns general questions and does not arise from loss, interruption or failure of the Affiliate Services or their functionality.

    (d) **"City Contacts."** The person or persons as authorized by City to contact FISERV with Technical Support requests. The City Contacts will be employees or representatives of City with sufficient expertise regarding the Affiliate Services to meaningfully act on information FISERV provides in response to a request for Technical Support.

    (e) **"Technical Support."** Training or advice FISERV provides by telephone to authorized City Contacts regarding the use or operation of the Affiliate Services.

2. <u>City Technical support Contacts</u>. FISERV will provide Technical Support services to the following 3 authorized City Contacts:

    2.1 Mickey Garcia – 512-974-3091; <u>mickey.garcia@austintexas.gov</u>

    2.2 Brian Bailey – 512-974-2109; <u>brian.bailey@austintexas.gov</u>

    2.3 Mark Caraway – 512-974-1182; <u>mark.caraway@austintexas.gov</u>

    City will permit only City Contacts to request Technical Support services from FISERV. If another person requests Technical Support, FISERV will refer that person to one of City's authorized City Contacts unless there is a bona fide emergency and no authorized City Contact is reasonably available. In such an emergency, FISERV will begin working on the request for Technical Support subject to later verification of the emergency by and involvement of an authorized City Contact. City may change its designated City Contacts from time to time upon written notice to FISERV.

3. <u>FISERV Technical Support Contacts</u>. If after reasonable effort an authorized City Contact fails to secure an adequate response by following the procedures set forth in Section 4 below, the authorized City Contact may escalate his or her concerns to the following FISERV representatives in the following order:

    3.1 Fiserv City Support – <u>support@fiserv.com</u> – 888-397-3497

    3.2 Assigned City Support Representative – Mark Prator – 512-314-7090; <u>mark.prator@Fiserv.com</u>

    3.3 Assigned Account Manager- Mark Granoff 512-314-7060; <u>mark.granoff@fiserv.com</u>

4. <u>Technical Support Services</u>. FISERV will provide City with Technical Support services according to the procedures and to the extent set forth in this Section.

    4.1 **Access to Technical Support Services.** FISERV will provide City Technical Support Services. Fiserv will provide City with Technical Support services by live telephone response

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Monday through Friday from 8:00 am to 5:00 pm on Central Time, exclusive of FISERV holidays, through a Technical Support line (1-888-397-3497) or by e-mail support@Fiserv.com. Outside of these periods, City may contact FISERV by pager service through the same Technical Support line. FISERV will use commercially reasonable efforts to have a Support Representative respond to City within four business hours from the time of request. FISERV will attempt to close a City request within three business days from the time of request.

The following is a list of FISERV Holidays:

New Year's Day	Thanksgiving Day
Martin Luther King Jr. Day	Veterans Day
Memorial Day	Christmas Day
Independence Day	Labor Day

4.2 **Monthly Technical Support Services Allotment.** FISERV will provide Technical Support for S1 and S2 issues to the extent necessary to resolve them. For S3 issues, FISERV will provide City with Technical Support services for which City will pay $150.00 per hour or any part thereof for Technical Support services relating to S3 issues in excess of 10 hours per month.

4.3 **Exclusions from Technical Support Services.** FISERV is not obligated to provide Technical Support services if City's request for Technical Support services: (a) results in any way from a change, modification or damage to software provided by FISERV to City; (b) arises from losses, interruptions or failures of the Affiliate Services attributable in whole or in part to City; or (c) arises from losses, interruptions or failures of the Affiliate Services attributable in whole or in part to third parties not under FISERV's supervision or control. FISERV may cease providing Technical Support services related to any Technical Support request if City refuses requests by FISERV for information, resources or both reasonably necessary to resolve the issue, or if City is unable to reproduce the performance issue that formed the basis for its Technical Support request.

(a) **Support for Enabling Technologies.** FISERV will use commercially reasonable efforts to provide Technical Support for database products and other Third Party software purchased from FISERV and used exclusively with the Services, but only to the extent that FISERV receives support from the manufacturers of such products and software. To ensure the maximum Technical Support possible for such products and software, City should purchase from the manufacturer a direct contract for support services.

(b) **Additional Payment for Technical Support.** If, in response to a request for Technical Support services, FISERV determines that losses, interruptions or failures of the Affiliate Services were attributable in whole or in part to City or any third party, FISERV has the right to charge City and City shall pay FISERV on a time and materials basis for its efforts to diagnose and resolve the performance issue.

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NONDISCRIMINATION CERTIFICATION

City of Austin, Texas

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below,   and agrees:

(1) Not to engage in any discriminatory employment practice defined in this chapter.

(2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.

(3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.

(4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.

(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.

(6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.

(7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

To the extent that Contractor does not have its own policies regarding non-discrimination and non-retaliation or is unable to make the certification outlined above, then, for the purposes of this Offer and any resulting Contract, Contractor agrees to adopt the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin

Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.
The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or

debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this ___28th___ day of __February, 2018__

CONTRACTOR __Fiserv - Wade Fairey__
Authorized
Signature _____

Title __Senior Vice President__

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION
SOLICITATION NO. MSO0054

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of $25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of $25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name _____

Signature of Officer
or Authorized
Representative: _____   Date 4 - 29 - 11

Printed Name Iser Culkerman

Title Site Manager

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below.

Chapter 5-4 of the Code of the City of Austin (Discrimination in Employment by City Contractors) requires that at all times while acting as a Contractor (as defined under Chapter 5-4) a Contractor must agree:

(1) Not to engage in any discriminatory employment practice defined in this chapter (including any later amendments or modifications)

(2) To take affirmative action to ensure that applicants are employed and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rate of pay or other form of compensation and selection for training or any other terms, conditions or privileges of employment.

(3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the City setting forth the provisions of this chapter.

(4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.

(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.

(6) To cooperate fully with the City's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to insure that the purpose of the provisions against discriminatory employment practices are being carried out.

(7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with the City subject to the terms of this chapter.

Please check one of the following

☒ Our firm's nondiscrimination policy conforms to the requirements of City Code, Chapter 5-4-2-B, items (1) through (7) and will be sent to the City upon request.

☐ Our firm does not have an established nondiscrimination policy and will adopt the City's minimum standard shown below. Our firm will send the adopted policy on company letterhead to the City upon request.

Minimum Standard Nondiscrimination in Employment Policy:
As an Equal Employment Opportunity (EEO) employer, the __Fiserv__ (company name) will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The __Fiserv__ (company name) will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting violation of this policy. Furthermore, any employee, supervisor or manager who becomes aware of any such discrimination or harassment should immediately report is to executive management or the human resources office to ensure that such conduct does not continue.

A COPY OF THE FIRM'S NONDISCRIMINATION POLICY WILL BE REQUIRED UPON CONTRACT AWARD.

Sanctions:
Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with this chapter.

Contractor's Name: ___Fiserv___

Signature of Officer or Authorized Representative: ___Jull___   Date: ___4-29-11___

Printed Name: ___Isir Cuckerman___

Title: ___Site Manager___

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Jim Howard/4-2031	PM Name/Phone	Larry Morris 4-2587
Sponsor/User Dept.	FINANCE DEPARTMENT CONTROLLERS	Sponsor Name/Phone	Larry Morris/4-2587
Solicitation No	Sole Source	Project Name	Financial Report Storage
Contract Amount	$ 500,000	Ad Date (if applicable)	n/a

Procurement Type

☐ AD – CSP
☐ AD – Design Build Op Maint
☐ IFB – IDIQ
☐ Nonprofessional Services
☐ Critical Business Need
☒ Sole Source*

☐ AD – CM@R
☐ AD – JOC
☐ PS – Project Specific
☐ Commodities/Goods
☐ Interlocal Agreement

☐ AD – Design Build
☐ IFB – Construction
☐ PS – Rotation List
☐ Cooperative Agreement
☐ Ratification

Provide Project Description**

The 5 year contract is for the continuation of maintenance and support for the financial report storage and retrieval software. This software gives City's financial staff an easily accessible query environment for financial viewing, research and analysis.   The reports are indexed, highly compressed and archived for quick retrieval.

Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.

The previous contract was awarded through a competitive Request for Proposal.   It was determined that it would be cost prohibitive to switch form the Fiserv platform. FIserv is the sole provider of maintnance, upgrades, and extractions from this platform. Fiserv is the sole owner of this software EXEMPT.

List the scopes of work (commodity codes) for this project. *(Attach commodity breakdown by percentage; eCAPRIS printout acceptable)*

92045 Software Maintenance/Support

Jim Howard	7/3/2017
Buyer Confirmation	Date

* Sole Source must include Certificate of Exemption
**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	7/3/17	Date Assigned to BDC	7/3/17

In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:

☐ Goals	% MBE		% WBE
☐ Subgoals	% African American		% Hispanic

GOAL DETERMINATION REQUEST FORM

	% Asian/Native American	% WBE
☒ Exempt from MBE/WBE Procurement Program	☐ No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

☐ Insufficient availability of M/WBEs	☐ No availability of M/WBEs
☐ Insufficient subcontracting opportunities	☐ No subcontracting opportunities
☐ Sufficient availability of M/WBEs	☐ Sufficient subcontracting opportunities
☒ Sole Source	☐ Other

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

~~Provide information on availability~~ N|A

Subcontracting Opportunities Identified

~~List any subcontracting opportunities identified~~. N|A

Counselor Name	
SMBR Staff	**Signature/ Date**
SMBR Director or Designee	**Date**
Returned to/ Date: *[signature]*	7/7/17